

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2164 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAJENDRASINH @ RAJU CHANDRA - SINGH SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2164 of 2003
MR HR PRAJAPATI for Petitioner
MR RC KODEKAR, AGP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/06/2003

ORAL JUDGEMENT

1. Heard MR.H.R.Prajapati, learned advocate for the
petitioner and Mr.R.C.Kodekar, learned AGP for the
respondents.
2. In the present petition, Rule has been issued by
this Court [Coram : P.B.Majmudar,J.] on 07.03.2003, made

it returnable after six weeks. The petitioner has challenged the order of detention dated 13.01.2003, which has been passed by the Commissioner of Police, Ahmedabad City under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter be referred to as "the PASA Act"], against the petitioner and on the same day, the order of detention has been executed, the petitioner was detained at Surat District Jail. According to the ground of detention, against the present petitioner, four offences have been registered on 28.08.2002, 29.08.2002, 04.09.2002 and 04.11.2002, under the provisions of Bombay Prohibition Act. In respect to the offence No.3, the petitioner was arrested on 10.01.2003 and in respect to the offence No.4, the petitioner was arrested on 11.01.2003. The two unregistered offences, have been registered against the petitioner on 25.11.2002 and 05.12.2002, which have been disclosed by the secret witnesses before the Sponsoring Authority on 07.01.2003. The statements of the secret witnesses were verified by the Detaining Authority on 08.01.2003. The petitioner was released on bail in respect to the offence Nos.3 and 4 on 12.01.2003 and 13.01.2003, the detention order has been passed against the present petitioner. The affidavit-in-reply has filed by the Detaining Authority and the State Government. Both are taken on record.

3. Mr.H.R.Prajapati, learned advocate for the petitioner has challenged the order of detention on various grounds, but he has submitted that only ground No.(q) is enough to vitiate the order of detention. The contention raised in ground No.(q) that the Detaining Authority has not done any exercise to verify the genuineness and correctness of the say of the witnesses and has blindly and mechanically accepted the version of the witnesses as gospel truth. Mr.Prajapati has also submitted that such failure has been considered as fatal to the order of detention by this Court in case of Bai Amina and various other orders of this Court. The reply given by the Detaining Authority in para-15 of the reply affidavit, where the Detaining Authority has deposed that the statements of the witnesses by calling upon them in his office and after satisfying himself, he come to the conclusion that the genuineness and correctness of the apprehension and fear expressed by the witnesses found to be true and correct and the identity of the witnesses cannot be disclosed to the petitioner in any way, as if identity is disclosed to the petitioner there in that case, the new chapter of the harassment to the witnesses may start and hence by striking balance between the private interest and public interest. The Detaining

Authority withheld the identity of the witnesses and passed the order of detention and claim privilege under Section 9(2) of the PASA Act. Mr.Prajapati, in light of this reply, has submitted that it is the duty of the Detaining Authority to verify the genuineness and correctness of the incidents, which have been disclosed by the secret witnesses before the Sponsoring Authority and before the Detaining Authority. This aspect has not been taken into account by the detaining authority, there is no averments made in his reply. Therefore, Mr.Prajapati has relied upon the decision of this Court, in the case of Gopal Ramchandra Shahu through Ramchandra K. Shahu Vs. State of Gujarat, rendered in Special Civil Application No.1692 of 1999 dated 07.07.1999 and submitted that this Court has taken the view that the Detaining Authority has personally recorded the verification, but such formal verification is meaningless. It is the bounden duty of the police to ascertain the credibility of the witnesses. The correctness of the statements made by them. A formal verification by the Detaining Authority or any other officer would not be sufficient. There is no documents made by the Detaining Authority in support of the statements made by the secret witnesses. Relying upon this decision, Mr.Prajapati has submitted that only on this ground, being non-application of mind by the Detaining Authority, the order of detention is vitiated.

4. Mr.R.C.Kodekar, learned AGP has submitted that whatever material has been placed, the satisfaction has been considered by the Detaining Authority. He has submitted that on verification of the statements of the secret witnesses, the Detaining Authority himself has satisfied with the fact narrated by the secret witnesses, is correct and that is how the same is considered to be true and the Detaining Authority has rightly been passed the order of detention and that order of detention is full application of mind and it is not vitiated.

5. I have considered the submissions made by learned advocates for both the parties. Considering the fact that on 07.01.2003, two secret witnesses have given their statements before the Sponsoring Authority and the same were recorded by the Sponsoring Authority on 08.01.2003. Thereafter on the next day, the said statements of the secret witnesses were verified by the Detaining Authority. The question is that the secret witnesses have given detail about unregistered offences against the petitioner, whether such offence has been committed or whether such incident has been occurred or not or merely to rely upon the statements of the secret witnesses, it

is enough for the Detaining Authority to pass the detention order without examining the credibility of the witnesses, who gave their statements before the Sponsoring Authority. Ultimately, subjective satisfaction must have been reached with satisfying the common sense and reasoning. The secret witnesses, whose names have not been disclosed and claimed privilege by the Detaining Authority under Section 9(2) of the PASA Act. No doubt, the said privilege adversely effected to the right of the detenu to make effective representation, but law permits to claim such privilege and, therefore, the identity of the secret witnesses have not been disclosed. In such circumstances, it is bounden duty of the Detaining Authority to see that no injustice would be caused to the detenu to verify the genuineness of the incident or credibility of the witnesses, whether they are given correct details or not, or whether any incident occurred or not and for that further exercise by the Detaining Authority would be necessary. Looking to the record of this case, formal inquiry which amounts to verification of the person, that fact is also not enough as relied subjective satisfaction of the Detaining Authority, after all the detention law is adversely effected against the fundamental rights of the detenu. On that occasion, the authority should not have come to the conclusion without any proper material as a subjective satisfaction, but for that some more care is required to be taken by the Detaining Authority, so he should have to examine genuineness and credibility of the witnesses, whether they are making correct statements or not. Therefore, whatever statements made by the secret witnesses must have to be examined, subsequently, by the Detaining Authority, whether according to the statements of the secret witnesses, any incident on the date has been occurred in the society or not and whether that occasion or activities of the petitioner alleged by the secret witnesses has been disturbed to the public tempo or peace in the society or not. Merely, the incident occurred is not enough, the Detaining Authority must to see that a public tempo and peace in the society would not be disturbed. No further exercise carried out by the Detaining Authority for coming to the subjective satisfaction. Looking to the facts of this case, on 07.01.2003, the statements of the secret witnesses have been recorded by the Sponsoring Authority and on the very next day, the proposal has been sent by the Sponsoring Authority without verification to the Detaining Authority. Therefore, the observation made by this Court in above referred case in Special Civil Application No.1692 of 1999 is squarely applied the facts of this case. The relevant observation has been made in para-2

are as under:-

"It is true that both the offences have been registered against the petitioner for violation of prohibition law, however, nothing on record suggest tat at the time of the raid, anything happened that would amount to breach of public order. Though the two witnesses have, on the assurance of anonymity, stated that the petitioner has been indulging into anti-social activities which are detrimental to the maintenance of public order. What is disturbing is that the credibility of the witnesses and the correctness of the said statements have not been verified. Both the statements have been recorded on 1st September, 1998, and the impugned order of detention has been made on 2nd September, 1998. This, in my view, does not leave sufficient time for the police to test the credibility of the witnesses and the genuineness of the contents of their statements. I have noted that the Detaining Authority has personally recorded the verification, but such formal verification is meaningless. It is the bounden duty of the police to ascertain the credibility of the witnesses. The correctness of the statements made by them. A formal verification by the Detaining Authority or any other officer would not be sufficient. Besides, the Detaining Authority has not made by counter affidavit to show whether such exercise had been undertaken or not. At least, in the present case, it is not possible to believe that the statements were duly verified, nor there is contemporaneous evidence to support the statements made by the witnesses. The Detaining Authority ought not to have relied upon the said statements, without proper verification, to record his subjective satisfaction in respect of the nefarious activities carried on by the petitioner. In absence of the said statements, there would not be any material to indicate that the petitioner's activities were prejudicial to the maintenance of public order."

6. In view of the above facts and circumstances of the case and considering the observation made by this Court and in light of the contention raised in ground No.(q), in my opinion, the Detaining Authority has failed to exercise his power coming to the subjective satisfaction for passing the order of detention. There

is no further exercise made by the Detaining Authority for verifying the statements of the secret witnesses regarding the incident and whether that occasion or incident or activities of the petitioner is really disturbed to the public tempo and peace in the society or not. That aspect is ignored by the Detaining Authority, which are non-application of mind, and, therefore, the order of detention, on this ground only, is vitiated.

7. In the result, the present petition is allowed. The order of detention dated 13.01.2003 passed by the Commissioner of Police, Ahmedabad City, against the detenu Shri Rajendrasinh @ Raju Chandrasinh Solanki detained at Surat District Jail is hereby quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. Direct service is permitted.

[H. K. Rathod, J.]

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